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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/678,604	10/03/2003	Laura Yantos	11306-168001	6150

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FISH & RICHARDSON P.C.  
PO BOX 1022  
MINNEAPOLIS, MN 55440-1022

EXAMINER
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ELKINS, GARY E

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 06/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/678,604

Applicant(s)

YANTOS, LAURA

Examiner

Gary E. Elkins

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 April 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 17 and 18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>20040916</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of Group I, claims 1-16 in the reply filed on 22 April 2005 is acknowledged. Claims 17 and 18 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

### ***Claim Rejections - 35 USC § 112***

2. Claims 4-7 and 12-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The following are each a double inclusion of an element insofar as the element is being reintroduced into the claims: claim 4, lines 2-4, "a first substantially stationary vertical sidewall" and "a second substantially stationary vertical sidewall" and claim 12, line 9, "two adjacent vertical sidewalls".

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 12 and 13 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Himes (fig. 5 emb).

5. Claims 12-14 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by any one of Jes, Bauer or Gulliver.
6. Claims 12, 13 and 15 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Billerbeck.
7. Claims 1-3, 8, 10, 12, 13 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Espinoza et al. Espinoza et al discloses a container including a movable sidewall 2, a lid 6 capable of providing access (by pulling the panels 18, 19 outwardly to an unlocked position and pulling the lid upwardly) and a support structure (see figs. 4A-4H) capable of retaining a bakery item of like size to a given one of the compartments in a stationary position relative to the outer walls of the container.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-5, 8 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over any one of Himes, Bauer or Gulliver, each in view of Kagen. Each of Himes, Bauer and Gulliver discloses all structure of the claimed container except a support structure capable of retaining a bakery item within the container. Kagen teaches that it is known to provide a box with a support structure 12 to facilitate retaining a bakery item in a box. It would have been obvious to provide the box in any one of Himes, Bauer or Gulliver with a support structure as taught by Kagen to facilitate packaging of a bakery item within the container.

10. Claims 1-6, 8 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jes in view of Kagen. Jes discloses all structure of the claimed container except a support structure capable of retaining a bakery item within the container. Kagen teaches that it is known to provide a box with a support structure 12 to facilitate retaining a bakery item in a box. It would have been obvious to provide the box in Jes with a support structure as taught by Kagen to facilitate packaging of a bakery item within the container.

11. Claims 1-3, 8, 9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Billerbeck in view of Kagen. Billerbeck discloses all structure of the claimed container except a support structure capable of retaining a bakery item within the container. Kagen teaches that it is known to provide a box with a support structure 12 to facilitate retaining a bakery item in a box. It would have been obvious to provide the box in Billerbeck with a support structure as taught by Kagen to facilitate packaging of a bakery item within the container.

12. Claims 1-5, 8 10 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over any one of Himes, Bauer or Gulliver, each in view of Nottage. Each of Himes, Bauer and Gulliver discloses all structure of the claimed container except a support structure capable of retaining a bakery item within the container and with respect to claims 10 and 16, a support structure comprising an aperture adapted to receive a substrate supporting a cake or bakery item. Nottage teaches that it is known to provide a box with a support structure R to facilitate retaining a bakery item or cake in a box. It would have been obvious to provide the box in any one of Himes, Bauer or Gulliver with a support structure as taught by Nottage to facilitate packaging of a bakery item or cake within the container.

13. Claims 1-6, 8, 10 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jes in view of Nottage. Jes discloses all structure of the claimed container except a support structure capable of retaining a bakery item within the container and with respect to claims 10 and 16, a support structure comprising an aperture adapted to receive a substrate supporting a cake or bakery item. Nottage teaches that it is known to provide a box with a support structure R to facilitate retaining a bakery item or cake in a box. It would have been obvious to provide the box in Jes with a support structure as taught by Nottage to facilitate packaging of a bakery item or cake within the container.

14. Claims 1-3, 8-10 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Billerbeck in view of Nottage. Billerbeck discloses all structure of the claimed container except a support structure capable of retaining a bakery item within the container and with respect to claims 10 and 16, a support structure comprising an aperture adapted to receive a substrate supporting a cake or bakery item. Nottage teaches that it is known to provide a box with a support structure R to facilitate retaining a bakery item or cake in a box. It would have been obvious to provide the box in Billerbeck with a support structure as taught by Nottage to facilitate packaging of a bakery item or cake within the container.

#### ***Allowable Subject Matter***

15. Claim 7 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

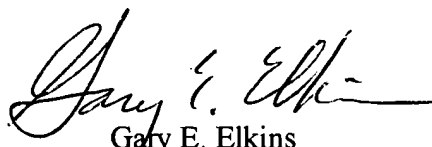
The remaining cited prior art is illustrative of the general state of the art.

In order to reduce pendency and avoid potential delays, Technology Center 3700 is encouraging FAXing of responses in Office Actions to (703)872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by Applicants who authorize charges to a PTO deposit account. Please identify the Examiner and art unit at the top of your cover sheet.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. Also, copies of an office action or other file information may be obtained from the Private PAIR system. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions regarding access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communication from the Examiner should be directed to Gary Elkins at telephone number (571)272-4537. The Examiner can normally be reached Monday through Thursday.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Mr. Lee Young can be reached at (571)272-4549.

  
Gary E. Elkins  
Primary Examiner  
Art Unit 3727